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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,013	04/12/2004	Stephen Michael McMahon	822.173	4688
7590 04/28/2005 Levisohn, Berger & Langsam LLP 19th Floor 805 Third Avenue New York, NY 10022			EXAMINER RAEVIS, ROBERT R	
			ART UNIT 2856	PAPER NUMBER

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

file

## Office Action Summary

Application No.

10/823,013

Applicant(s)

MCMAHON, STEPHEN MICHAEL

Examiner

Robert R. Raevis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7, 10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6 and 7 is/are allowed.
- 6) ☒ Claim(s) 10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Schellin.

Taylor teaches a materials tester that employs an analyzer assembly 14 and vacuum tube 102 whose rearward end connects to a vacuum source. The tube *penetrates* into the ground, which is necessary to carry out sampling.

Taylor does not illustrate use of a coupling device.

Schellin teaches (Figure 1) a coupling device, including a housing B having a bore and a groove (that retains a resilient member D), the bore adapted to receive an element A that has an annual rib a.

As to claims 10 and 12, it would have been obvious to employ Schellin's coupling device (Figure 1) to permit for a plurality of tubes to be connected together to provide sufficient length to sample/analyze material from a depth of interest. In addition, it is apparent that Schellin's housing B is "*securable* to a penetration hardness tester" (italics added, line 3 of Applicant's claims 10 and 12) as Ruzicka et al illustrate (Figures 1,2; and col. 4, lines 32-56) that vacuum lines 18.7 are connected to vacuum sources 18.8 in hardness testers, suggestive that Schellin's vacuum house coupling is employable as a means for providing a tight joint there between.

Regarding Applicant's **REMARKS**, consider the following:

Claims 10 and 12 are not limited to hardness testing, as exhibited by their "securable" (line 3 of claims 10 and 12) limitation that does not imply actually being secured. Presently, method claim 10 is directed to a plurality of steps (after

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"comprising" on line 2 of claim 10) that is merely "securable" (line 3 of claim 10) to a penetration hardness tester, and apparatus claim 12 is directed to a combination (after "comprising" on line 2 of claim 12) that is merely "securable" to a penetration hardness tester. If these claims were amended to positively include the hardness tester, this rejection would be overcome.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pfund's tester employs a vacuum line 87 connected to an impactor head device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*RA2011*